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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies on	)	IB Docket No. 97-142
Foreign Participation in the	)	
U.S. Telecommunications Market	)	

COMMENTS

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.415 and 1.419 of the Commission's Rules, hereby submits its comments in response to the *Order and Notice of Proposed Rulemaking* ("*Order and NPRM*") issued in the above-captioned proceeding.[1/]

WCA is the principal international trade association of the wireless cable industry. Its membership includes the operators of virtually every wireless cable system in the United States, as well as many of the wireless cable systems operating overseas. In addition, WCA represents the licensees of many of Multipoint Distribution Service ("MDS") stations and Instructional Television Fixed Service ("ITFS") stations that lease transmission capacity to domestic wireless cable operators. Given the importance of MDS and ITFS licenses to the domestic wireless cable industry, WCA's membership has a vital interest in the Commission's Rules governing foreign ownership of radio licenses.

[1/] *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* FCC 97-195, IB Docket No. 97-142 (rel. June 4, 1997).

As a preliminary matter, WCA wishes to emphasize that it fully supports the efforts by the United States and other countries to open international markets for telecommunications services. WCA firmly believes that enhancing competition in the multichannel video programming marketplace is in the best interest of the wireless cable industry and consumers worldwide. As such, WCA supports the principles of open entry and procompetitive regulation embodied in the Fourth Protocol to the General Agreement on Trade in Services (the "WTO Basic Telecom Agreement").

As it considers the issues raised by the *Order and NPRM*, the Commission should take this opportunity to clarify that the restrictions set forth in Section 310(b) of the Communications Act of 1934, as amended (the "Communications Act"), and the identical provisions of Section 21.4 of the Commission's Rules, are inapplicable to those non-common carrier MDS facilities that are employed for the distribution of subscription video programming or other non-broadcast services.

By its terms, Section 310(b) applies only to Commission licensees in broadcast, common carrier or aeronautical services.[2/] In its recent decision in *MCI Telecommunications Corp.*, the Commission determined that restrictions on foreign ownership should only be applied to those services specifically enumerated in Section 310(b), and reasoned that since Direct Broadcast Satellite ("DBS") service providers were not common carriers, and are classified as "non-broadcast" under the decision in Subscription *Video Services*,[3/] "neither Section 310(b) of the Act

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[2/] 47 U.S.C. § 310(b).

[3/] *Subscription Video Services*, 2 FCC Rcd 1001 (1986).

nor section 100.11 of the Commission's rules, which codifies the statutory provision, is applicable to MCI's proposed [subscription DBS] service."[4/] In recent years, the Commission has chosen to exempt not only DBS from the alien ownership restrictions of Section 310(b) but also providers of other new subscription services, such as the Digital Audio Radio Satellite Service ("DARS") and Local Multipoint Distribution Service ("LMDS") licensees who elect non-common carrier status.[5/]

The same reasoning should apply to those MDS facilities employed to provide subscription video programming or other non-common carrier, non-broadcast services. In its 1987 *Report and Order* in CC Docket No. 86-179, the Commission clearly determined that under the *Subscription Video Services* ruling, "[s]ubscription video entertainment programming provided over MDS falls squarely within this category of non-broadcast services."[6/] Thus, just as non-common carrier, non-broadcast DBS, DARS and LMDS systems are exempt from Section 310(b) and implementing Commission rules, non-common carrier MDS facilities used to provide

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[4/] *See MCI Telecommunications Corp.*, 11 FCC Rcd 16275, 16285 (1996).

[5/] *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 11 FCC Rcd 1, 37 (1995) [hereinafter cited as "*DARS Order*"]; *Rulemaking to Amend Parts 1, 2, 21, and 25 Of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for the Local Multipoint Distribution Service and for Fixed Satellite Services*, FCC 97-82, CC Docket No. 92-197, at ¶¶ 240 - 43 (rel. Mar. 13, 1997)[hereinafter cited as "*LMDS Second Report & Order*"]. The Commission has retained the Section 310(a) restriction that prohibits grant of such licenses to a representative of a foreign government. *DARS Order*, 11 FCC Rcd at 37 n. 130; *LMDS Second Report and Order*, at ¶ 241.

[6/] *See Revisions to Part 21 of the Commission's Rules Regarding the Multipoint Distribution Service*, 2 FCC Rcd 4251, 4255 (1987)

a subscription video or other non-broadcast service should be exempt from Section 310(b) of the Communications Act and Section 21.4 of the Commission's rules. As the Commission acknowledged in a case involving alien ownership of Interactive Video and Data Service ("IVDS") licenses:

> Our experience has been that competition in the provision of telecommunications services promotes high quality service at reasonable price to consumers. Competition also stimulates economic growth and investment in new technologies. These effects are in the public interest. Aliens can be effective competitors in U.S. markets and, absent a specific directive from Congress that we consider the nationality of applicants for IVDS licenses under the public interest standard, we see no valid public interest justification for denying IVDS licenses to all foreign nationals. Indeed, to do so here would deny American consumers additional competition that such licensees would bring, which would itself be contrary to the public interest.[7/]

The same public interest benefits will be achieved by clarifying that non-common carrier, non-broadcast MDS facilities are not subject to the foreign ownership restrictions of Section 310(b).[8/]

In conclusion, WCA reiterates its support for the Commission's efforts in this proceeding to achieve open markets for telecommunications services. WCA submits that the principles of free trade and fair competition supporting the WTO Basic Telecom Agreement would be best served by clarifying that non-common carrier, non-broadcast MDS facilities are exempt from the

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[7/] *Cristina del Valle*, 11 FCC Rcd 2948, 2949 (1996).

[8/] In those cases of foreign investment in an MDS facility that is employed to provide a common carrier service, the Commission should make determinations based solely on whether the grant of a license would serve the public interest, and should eliminate the effective competitive opportunities test as to investment from World Trade Organization member countries, consistent with the approach proposed in the *Order and NPRM*. *See Order and NPRM*, at ¶ 68.

foreign ownership limitations of Section 310(b) of the Communications Act and Section 21.4 of the Commission's Rules.

Respectfully submitted,

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